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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,251	04/09/2004	Richard C. Gunderson	1001.2393101	1761
11050 7590 03/30/2011 SEAGER, TUFTE & WICKHEM, LLC 1221 Nicollet Avenue Suite 800 Minneapolis, MN 55403				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
03/30/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/822,251

**Applicant(s)**

GUNDERSON ET AL.

**Examiner**

Eric Blatt

**Art Unit**

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 40-47, 49 and 50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-47, 49 and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-040)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is responsive to the amendment filed October 7, 2010. Claims 40-47, 49 and 50 are currently pending. Claims 40-47, 49 and 50 are rejected herein.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10-7-2010 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40-47, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Letendre et al. (US 6,214,036) in view of Wright (US 7,264,632) and Krivoruchko et al. (US 2003/0204237).

Letendre discloses a medical device delivery system (Figures 1-5) comprising an inner shaft 60, an outer shaft 50 disposed over the inner shaft 60, and a self expanding-stent 10. The distal end of the inner shaft 60 comprises a bumper, and the bumper includes bumper retainers comprising the outwardly projecting T-shaped portions between recesses 54 in Figure 2. There is a retaining member (two of the legs 20 define a single retaining member) extending from the stent body 12, the retaining member being releasably coupled to the bumper retainer. The retaining member includes a partially open cell 26 of the stent. The retaining member comprises a nickel-titanium alloy. (Col. 7, Lines 4-15) Said alloys are at least somewhat radiopaque. The retaining member includes two paddles 20, 28 wherein each of the paddles includes a leg portion 20 and a head portion 28. The bumper retainer interdigitates with the retaining member such that they are detachably coupled.

Letendre fails to disclose that the bumper has an outer diameter greater than the outer diameter of the inner shaft. The bumper retains the stent by having an outer diameter that is nearly as large as the inner diameter of the outer shaft such that the retaining members of the stent are wedged between the outer surface of the bumper and the inner surface of the outer shaft and cannot move radially to escape the bumper retainers. Wright discloses a similar stent retaining means (Figures 5-6) comprising a bumper 62 having bumper retainers 61 wherein the outer diameter of the bumper is nearly as large as the inner diameter of an outer tube 54 such that retaining members 65, 67, 68, 69 cannot move radially to escape the bumper retainers 61. Wright teaches that the bumper may have an outer diameter greater than the outer diameter of the

shaft 60. Since the shaft 60 is not required to be as large, the shaft 60 may be reduced in diameter to achieve benefits such as increased flexibility and kink resistance. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Letendre by reducing the outer diameter of the inner shaft 60 relative to the bumper at the distal end of the inner shaft as taught by Wright in order to achieve these benefits.

Letendre and Wright thus teach all elements of claims 40-47, 49 and 50 except for the stent being disposed between the outer surface of the inner shaft and the inner surface of the outer shaft. As seen in Figure 3, the inner shaft terminates at the bumper and does not extend distally through the stent lumen. Krivorchko discloses a related delivery apparatus wherein a self-expanding stent is retained between an inner shaft and an outer shaft such that the outer shaft may be withdrawn to deploy the stent. (Figures 3 and 4) Krivorchko teaches that the inner shaft may extend through the lumen of the stent and distally beyond the stent to allow for a device, such as an occlusion balloon 102, to be attached to the inner shaft distal to the stent. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Letendre by having the inner shaft extend through the stent lumen and distally beyond the stent to achieve these benefits as taught by Krivorchko.

### ***Response to Arguments***

Applicant's arguments with respect to claims 40-47, 49 and 50 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is 571-272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. B./  
Examiner, Art Unit 3734

/Gary Jackson/  
Supervisory Patent Examiner, Art Unit 3734  
March 28, 2011